Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
1998 Biennial Regulatory Review –	)	CC Docket No. 98-171
Streamlined Contributor Reporting	)	
Requirements Associated with	)	
Administration of Telecommunications	)	
Relay Service, North American Numbering	)	
Plan, Local Number Portability, and	)	
Universal Service Support Mechanisms	)	
	)	
Telecommunications Services for	)	CC Docket No. 90-571
Individuals with Hearing and Speech	)	
Disabilities, and the Americans with	)	
Disabilities Act of 1990	)	
	)	
Administration of the North American	)	CC Docket No. 92-237
Numbering Plan and North American	)	NSD File No. L-00-72
Numbering Plan Cost Recovery	)	
Contribution Factor and Fund Size	)	
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing Format	)	CC Docket No. 98-170

REPLY COMMENTS OF XO COMMUNICATIONS, INC.

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Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
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1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
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Number Resource Optimization	)	CC Docket No. 99-200
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REPLY COMMENTS OF XO COMMUNICATIONS, INC.

XO Communications, Inc., for and on behalf of its regulated subsidiaries (collectively "XO") provides the following reply comments in response to the Commission's *Report and Order and Second Further Notice of Proposed Rulemaking* ("*Second Further Notice*") regarding modifications to the Commission's methodology for determining universal service contributions.

INTRODUCTION AND SUMMARY

The cacophony of comments filed to date in this proceeding demonstrates one thing: the Commission is faced with a choice among imperfect alternative contribution methodologies for universal service. Commissioners and some commenters have voiced concerns with the ability of the current revenue-based methodology to keep pace with changing market conditions and deployment of new technologies. That methodology, however, has the benefit of being a known quantity, both legally and operationally, that has successfully been used to fund universal service objectives for many years. Accordingly, XO strongly recommends that the Commission retain, and devote its efforts to improving, the current revenues-based contribution methodology.

At a minimum, the Commission should not adopt any of the proposed connections-based methodologies. The various proposals are all Byzantine in their complexity, are not narrowly tailored to ensure that only interstate services are assessed universal service contributions, and would require carriers to expend enormous resources to implement and maintain the systems necessary to comply with such a methodology. Paradoxically, those proposals also include revenue-based assessments for companies that provide calling card or other interstate telecommunications that are not provided over a dedicated connection to the public switched network.

If the Commission nevertheless decides to move away from a revenue-based contribution methodology, the Commission should pursue a telephone numbers-based methodology. While such a methodology shares many of the shortcomings of the purely connections-based proposals, it is far less complicated and more manageable. The Commission can alleviate several of those shortcomings, moreover, if the Commission revises the telephone numbers-based methodology outlined in the *Second Further Notice* so that fees related to special access and private lines which do not have assigned numbers are assessed on the basis of interstate revenues associated with such lines rather than on the capacity of those lines.

A change to any new methodology, whether connections-based or telephone number-based, will be expensive and will require a significant period of time for conversion. Accordingly, the Commission should permit carriers at least two years, rather than the one year the Commission proposed, to complete any such a conversion. In addition, the Commission should continue to permit carriers flexibility in the recovery of universal service contributions from end users as set forth in the *Second Further Notice*.

DISCUSSION

1. A Revenue-Based Contribution and Recovery Methodology Remains the Best Alternative for Funding Universal Service.

The Commission long ago adopted a revenue-based methodology for determining the contributions to universal service required of interstate telecommunications service providers. That methodology has withstood legal challenges and has successfully been used to fund universal service objectives. The Commission properly initiated this proceeding to re-examine that methodology to determine whether a superior methodology exists and should be adopted. The comments filed to date in this proceeding demonstrate that while adjustments may be needed to the current universal service funding mechanism, no superior – or even comparable – contribution methodology exists. XO, therefore, strongly recommends that the Commission retain the current revenue-based contribution methodology and explore ways in which that methodology can be improved to ensure that all providers of interstate telecommunications services contribute to universal service funding on an equitable, nondiscriminatory, and competitively neutral basis.

Several commenters, however, recommend that the Commission largely abandon a revenue-based methodology in favor of universal service contributions based on connections. Two of the leading such commenters are SBC Communications, Inc. and BellSouth Corporation (collectively SBC/BellSouth), who have developed their own connections-based methodology. SBC/BellSouth, like others criticizing revenue-based contributions, unreasonably exaggerate the short-comings of that approach and fail to address, much less remedy, critical deficiencies in their own proposals.

The primary criticism commenters have made of assessing universal service contributions based on interstate revenues is that such a methodology "does not provide a stable or sufficient source of universal service support" because of "the rapid erosion of the universal service contribution base that is being caused by the proliferation of IP telephony services and broadband services that are not included in the current contribution base."[1] This criticism mixes apples and oranges. The existence of any "rapid erosion of the universal service contribution base" is debatable at best, but even if it is occurring, the issue is *whether* IP telephony and broadband service providers must contribute to universal service, not *how* all liable carriers must contribute. The size of the contribution base, therefore, bears no relationship to determining the method by which that base is required to contribute to universal service support.

[1] SBC/BellSouth Comments at 5.

Indeed, SBC/BellSouth concede that "it is certainly possible for IP telephony and broadband providers to contribute to universal service on the basis of interstate telecommunications revenues," but they believe that "inclusion of these services in the contribution base is much easier with a connections-based contribution methodology."[2] The allegedly greater ease with which the Commission could include these other service providers in the contribution base, however, is based on SBC/BellSouth's contention that under "a connections-based contribution methodology, the Commission would not have to make individual determinations about whether IP telephony services are interstate telecommunications services" or "be concerned about broadband Internet providers allocating a portion of their revenues as eligible interstate telecommunications revenues."[3]

The Communications Act states differently. Regardless of the contribution methodology, the Commission can assess universal service contributions only from providers of "interstate telecommunications services."[4] Contrary to SBC/BellSouth's suggestion, the Commission simply cannot impose connections-based universal service contributions on IP telephony or broadband service providers without determining the extent to which they provide interstate telecommunications services.[5] Adoption of a connections-based methodology thus would not make inclusion of IP telephony and broadband service providers any "easier" than maintaining the existing revenue-based methodology. The current exclusion of IP telephony and broadband service providers

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[2] *Id*. at 6-7.
[3] *Id*. at 7.
[4] 47 U.S.C. § 254(d).
[5] As SBC/BellSouth recognize, the Commission has already established a docket for making that determination, SBC/BellSouth Comments at 6, and the Commission should not attempt to do so in this proceeding.

from the contribution base has no impact whatsoever on the choice of universal service contribution methodology in this proceeding.

Opponents of the current methodology also comment that "a revenue-based contribution methodology is not manageable in a rapidly evolving market," citing as examples commercial mobile radio service ("CMRS") providers and bundled service offerings.[6] The problem, according to these commenters, is the difficulty in separating intrastate from interstate revenues. The Commission, however, has a long history of addressing and promulgating regulations governing jurisdictional separations issues,[7] and no commenter has provided any evidence that the Commission is incapable of resolving such issues in this context. To the contrary, other commenters have proposed methods for more accurately tracking the jurisdictional nature of CMRS calls and for attributing revenues from bundled service offerings to intrastate and interstate jurisdictions.[8] The Commission should explore these options for adapting the current methodology to changing market conditions before scrapping that methodology entirely.

A connections-based contribution methodology, moreover, does not eliminate the need to separate intrastate from interstate usage. Many customers connected to the public switched network seldom or never use that connection for interstate telecommunications services, yet their service provider(s) (and ultimately they) would be assessed federal universal service contributions – at the same level as customers who use their

[6] *E.g.*, SBC/BellSouth Comments at 7-8.
[7] *E.g.*, 47 C.F.R. §§ 36 & 64.
[8] *E.g.*, California Public Utility Commission Comments at 6-9; Verizon Comments at 4-5.

connections exclusively or extensively for interstate telecommunications services. Again, such a contribution mechanism is inconsistent with federal law.[9]

Finally, SBC/BellSouth claim that "a revenue-based contribution methodology is not competitively neutral," citing the allegedly greater discretion enjoyed by competitive local exchange carriers ("CLECs") in allocating revenues between jurisdictions.[10] CLECs, however, do not allocate revenues solely for universal service contribution purposes. As the California Public Utilities Commission ("CPUC") correctly observes in its comments, all carriers must equitably attribute revenues between jurisdictions for multiple purposes, including for assessment of state user fees, Telecommunications Relay Service, Numbering Administration, Local Number Portability, and federal regulatory fees.[11] The suggestion that CLECs abuse their discretion in attributing their revenues finds no support in the record in this case and cannot justify abandoning revenue-based contributions to universal service.

The current revenue-based contribution methodology has its shortcomings, but it continues to be the alternative that best complies with applicable law, universal service funding needs, and administrative simplicity. Accordingly, XO strongly urges the Commission to retain that methodology and to continue its efforts to revise that methodology to ensure that all interstate telecommunications service providers contribute their full and fair share to the universal service fund.

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[9] *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).
[10] *Id*. at 8. In addition, SBC/BellSouth cite the different treatment accorded wireless and wireline carriers, but as discussed above, that distinction is based on jurisdictional separations issues and other commenters have proposed means by which the jurisdictional nature of wireless carriers can be determined more accurately. SBC/BellSouth also cite the exclusion of broadband services from the contribution base, but such an exclusion lacks competitive neutrality only to the extent, as also discussed above, that the Commission determines that broadband services are interstate telecommunications services.
[11] CPUC Comments at 7-8.

2. The Commission Should Not Adopt a Connections-Based Methodology.

XO previously detailed the deficiencies of a connections-based contribution methodology in great detail in its prior comments,[12] and nothing in the *Second Further Notice* or the comments of other interested parties in response to that Notice alters the applicability of those comments. To the contrary, the comments advocating adoption of a connections-based methodology serve to reinforce its legal, operational, and administrative problems. XO will not repeat its prior comments here except to respond briefly to some of the arguments made by the proponents of a connections-based contribution methodology.

As an initial matter, no commenter proposes a pure connections-based contribution methodology – nor could they, given that not all interstate telecommunications services are provided using dedicated connections to the public switched network. The SBC/BellSouth proposal, for example, incorporates significant assessments on the *revenues* of interstate telecommunications providers, not only for services (like calling card services) without a dedicated connection, but for carriers who provide an end user customer's interstate toll services but not the customer's local service.[13] Criticisms of the existing revenue-based contribution methodology ring hollow when the commenters continue to rely on such a methodology as an integral part of their connections-based proposals. This continued reliance on revenue-based contributions, moreover, demonstrates the continued viability, if not necessity, of a revenue-based methodology.

[12] Comments of Time Warner Telecom, XO Communications and Allegiance Telecom (April 22, 2002).
[13] SBC/BellSouth Comments at 9-11.

Tellingly, none of commenters who support a connections-based contribution methodology address the issue of the complexity of their proposals or the exorbitant expense that carriers would incur to change their billing and other operations support systems to accommodate such a methodology. Such expense may mean little to carriers who have substantial resources and a large base of captive ratepayers from whom it can recover the costs of extensive modifications to its systems. To smaller competing carriers like XO, however, devoting the resources required to modify and manage the systems needed to implement a connections-based contribution methodology – particularly when other state and federal assessments these carriers must pay are revenue-based – is a significant burden and competitive disadvantage.[14] In light of the other irreparable flaws inherent in a connections-based contribution methodology, such a dramatic increase in carriers' administrative burdens in complying with universal service contribution requirements is unwarranted.

3. If the Commission Abandons the Current Revenue-Based Methodology, a Telephone Numbers-Based Methodology Would Be the Best Alternative.

If the Commission nevertheless determines to move away from the current revenue-based contribution methodology, the Commission should explore a telephone numbers-based methodology. While this methodology shares many of the same deficiencies as the connections-based proposals, a telephone numbers-based methodology with the modifications discussed below is far less complex and involves tracking telephone number assignments to end user customers – which carriers already do for other purposes – rather than requiring the costly development of the means to define and

[14] Declaration of Steve Ednie in Support of Comments of Time Warner Telecom, XO Communications,

account for "connections." A telephone numbers-based contribution methodology thus can be somewhat less onerous than a connections-based methodology.

One major problem with the telephone numbers-based methodology as outlined in the *Second Further Notice* is that contributions related to special access and private lines, which do not have numbers assigned, would be assessed on the basis of their capacity. Such a telephone numbers-based methodology thus incorporates one of the more problematic aspects of a connections-based methodology and suffers from all of the corresponding deficiencies that XO and other commenters have described. Accordingly, XO recommends that if the Commission decides to deviate from the current contribution methodology and to explore a telephone numbers-based methodology as the next best alternative, the Commission should modify its current proposal to require that contributions for special access and private lines be assessed based upon the interstate revenue associated with such lines, rather than the capacity of those lines.

Any change in the universal service contribution methodology will require significant modifications to carriers' existing billing and operations systems that will take much longer than the one year that the Commission has proposed. Accordingly, if the Commission adopts a methodology other than a revenue-based methodology, XO recommends that the Commission establish at least a two-year transition period to enable XO and other similarly situated carriers to modify their current systems. In addition, the Commission should continue to permit carriers flexibility in the recovery of universal service contributions from end users as set forth in the *Second Further Notice*.[15]

Inc., and Allegiance Telecom (April 22, 2002).

[15] *Second Further Notice,* ¶ 40.

CONCLUSION

XO and other commenters who support the existing revenue-based contribution methodology have made a compelling case for revising, rather than rejecting, that methodology. Commenters supporting connections-based methodologies, on the other hand, have failed to demonstrate that adoption of such a methodology would remedy the problems they perceive with the current system, much less to justify the increased complexity and costs inherent in their proposals. Accordingly, the Commission should retain, and work to improve, the existing revenue-based contribution methodology. If the Commission decides to move away from that methodology, however, it should adopt a modified telephone numbers-based contribution methodology as describe above with a minimum of two years to transition to that methodology.

Respectfully submitted,

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